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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Petition for Waiver Filed by)
)
Alenco Communications, Inc.)
)
Concerning the Definition of "Study Area" Contained in the)
Part 36 Appendix-Glossary of the Commission's Rules)

AAD 95-139

To: Chief, Common Carrier Bureau

CC: 96-45

**REQUEST FOR REMOVAL OF WAIVER CONDITION
CONSISTENT WITH COMMISSION POLICY**

Alenco Communications, Inc. ("Alenco") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted April 1, 1996, with respect to Alenco's study area.¹ The Order authorized the transfer of local exchange facilities consisting of four exchanges serving 496 access lines into Alenco's existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the Alenco study area of \$880,041 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,² Alenco requests that its individual USF cap be removed as of January 1, 2000.³

¹ Memorandum Opinion and Order, AAD 95-139, 11 FCC Rcd 11477 (1996) ("Order").

² Memorandum Opinion and Order on Reconsideration, AAD Nos. 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

³ Although this Request references an effective date of January 1, 2000, Alenco does not waive its right to raise issues in the future with respect to the applicability of the Commission's policy or rules to prior periods beginning May 8, 1997.

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Alenco expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Alenco respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Alenco respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Alenco submits the following:

I. Background

On September 20, 1995, Alenco and six other companies filed a joint petition for waiver of the frozen study area boundaries. On April 2, 1996, the FCC released its Order authorizing the removal of exchanges from the Contel and GTE Texas study areas and allowing Alenco and the other six companies to consolidate their acquired exchanges within their respective existing Texas study areas. Alenco was authorized to transfer four exchanges serving 496 access lines into its existing study area subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided to the existing study area would not exceed the estimated post-upgrade amount of \$880,041, specified in the joint petition.⁴ The National Exchange Carrier Association ("NECA") was ordered not to distribute USF payments exceeding the limitation.

⁴ Order at ¶ 20.

In the Order, the Bureau also acknowledged appropriately that

new USF rules, implementing new statutory mandates, are likely to alter the distribution of USF support to high-cost areas and require us to revisit these issues following implementation of the 1996 Act.⁵

Although Alenco was aware in 1995 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Alenco, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.⁶ Alenco believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. The Alenco study area's 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation ("USAC") to the Commission on October 1, 1999, would be \$1,413,297.79. Grant of this request will allow Alenco to recover fully the USF payments related to the costs incurred in providing service to rural Texas.

II. Removal of Alenco's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area

⁵ Id.

⁶ Since purchasing four exchanges from GTE, Alenco has invested heavily to upgrade the infrastructure of its exchanges. Alenco upgraded the four exchanges from step switches to state-of-the-art digital switch facilities, buried cable, and fiber. Alenco also upgraded its central office equipment and outside plant. Since 1996, Alenco has invested approximately \$8,783,132 throughout its exchanges to upgrade the facilities for improved service to its customers.

changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.⁷ Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.⁸ As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."⁹ The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."¹⁰ The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved areas and upgrade their networks."¹¹

Alenco's conditions are effectively identical to those petitioners addressed in the Cap

⁷ Cap Removal Order at ¶ 9.

⁸ Cap Removal Order at ¶ 10.

⁹ Id.

¹⁰ Id.

¹¹ Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

Removal Order. Therefore, removal of Alenco's individual USF cap is both warranted by, and consistent with, the Commission's conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, Alenco purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Following the grant of study area waiver, Alenco proceeded to deploy service and upgrade the facilities according to its plans. Continuing to limit Alenco to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission's policies. Further, continued application of the individual cap imposed in April of 1996 will hinder Alenco's incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Alenco's ability to maintain reasonably comparable rates for modern services.

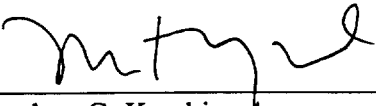
III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, Alenco requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000. The Alenco study area's 2000 USF receipts, based on data forwarded from USAC to the Commission on October 1, 1999, would be \$1,413,297.79. Accordingly, Alenco requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Alenco's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Alenco to continue to maintain and upgrade its facilities for the provision of universal service to its rural Texas study area. Expedited grant of this request will serve the public interest by

ensuring that Alenco receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Alenco Communications, Inc.

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October 15, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" of Alenco Communications, Inc., was served on this 15th day of October, 1999 by hand delivery to the following parties:


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